IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2255 OF 2000

1.Pratapsingh R.Pardeshi
Adult, Indian Inhabitant, having address as C/o. Mohansing Bayas, IPS (Retd), Giznaz, Jawahar Housing Society, Civil Lines, Solapur.

2. M/s.Makhija & Vora Associates
a partnership firm, duly registered under the Indian Partnership Act, 1932, and having its registered office at "Mangal Deep" Building 471, 16th Road, Khar, Bombay-400 052 ..Petitioners

Versus

1. State of Maharashtra

2. The Additional Collector and Competent Authority, Pune Urban Agglomeration, Pune

3. The Secretary, Housing & Special Assistance Department, Government of Maharashtra, Mantralaya, Mumbai-400 032. ..Respondents

---

Mr.R.D.Soni for the petitioners.

Mr.S.R.Nargolkar AGP for Respondent Nos.1 to 3.

Coram : R.M.LODHA & R.S.MOHITE,JJ

Date : 7.4.2005.

Oral Judgment :- (Per : R.M.Lodha,J)

. The 1st petitioner was owner of the property bearing survey no.119 + 204 + 205 + 206/1 + 209/1

plot no.5, situated at Lohegaon, Taluka Haveli, Pune. The said land being in excess under the provisions of Urban Land Ceiling and Regulation Act and declaration of surplus land having been made by Additional Collector and competent aurhority, the petitioner made an application for exemption under Section 20, 21 of the said Act. The 1st petitioner declared the scheme in accordance with the scheme announced by the Collector wide ULC/WSHS-21/249/212/PA dated 5.2.1979. In the scheme the 1st petitioner declared that the scheme is for construction of houses for weaker section of the society. The said scheme was sanctioned by the State Government through its competent authority in exercise of the powers conferred by Sub-section 1 of Section 21 of the said Act. As per the scheme, 50 tenaments were to be built below 40 sq. meters and 20 tenaments were to be built above 50 sq. meters and upto 80 sq. meters. The scheme was sanctioned on 8.8.1984. As per the scheme 10% of the tenaments were reserved for the nominees of the State Government. The total permitted area for construction was 1920 sq.meters under the scheme and 10% thereof i.e. 192 sq. meters constructed area was reserved for Government nominees. The scheme was to be completed within 5 years but that was not done, upon extension being granted, the scheme is said to have been implemented between the years

1992-93. The grievance of the petitioners in the said petition is that the respondents cannot insist on reservation of 10% of the total tenaments. According to the petitioners only 5% of the total tenaments can be reserved for allotment for Government nominees. The whole case of the petitioners is founded on the Judgment of the Supreme Court in the case of M/s.Shantistar Builders V/s. Narayan Khimalal Totame reported in **AIR 1990 SC 631.**

2. The submission of the learned Counsel for the petitioners is that though the scheme was sanctioned on 8.8.1984, it was implemented between the years 1990-1992-1994. The State Government having issued Government Resolution making only 5% reservation in such schemes from 30.1.1990, the petitioners should also be extended the said benefit. The learned Counsel for the petitioners also submitted that vide communication dated 16.9.1998 the petitioners were informed that their representation of 5% reservation in the subject scheme was under consideration but nothing further has been heard thereafter. The learned Counsel submitted that respondent be directed to consider petitioners' representation in accordance with law.

3. Though no reply has been filed by the

respondents, the Assistant Government Pleader invited our attention to the Government Resolution dated 15.10.1997 whereby the Judgment of the Supreme Court in the case of Shantistar was implemented and he submitted that the petitioners' scheme having been sanctioned much before the cut off date i.e. 30.1.1990, the concession reservation of 5% is not available to the petitioners' case.

4. That the scheme declared by 1st petitioner in accordance with the scheme announced by the Collector was sanctioned by the State Government through its competent authority under Section 21(1) of the Urban Land and Ceiling Act on 8.8.1984 is not in dispute. The fact that the scheme was implemented between the years 1992-94 is not relevant for the purposes of applicability of Government Resolution dated 15.10.1997. As already noticed above by Government Resolution dated 15.10.1997, 5% reservation was made applicable as per the decision of the Supreme Court in Shantistar for the schemes sanctioned after 30.1.1990. The cut off date seems to be based on the date the Judgment was pronounced by the Supreme Court in the case of Shantistar Builders. In the present case the scheme was sanctioned on 8.8.1984 and therefore, the present case is not covered by the Government Resolution dated 15.10.1997. Incidently, we may

notice that the petitioners have not challenged the legality of the Government Resolution dated 15.10.1997.

5. Since the petitioners' case does not fall within four corners of Government Resolution dated 15.10.1997, we hardly find any justification in directing the State Government to consider petitioners' representation for 5% reservation.

6. Writ petition has no merits and is dismissed. Rule is discharged. Interim order dated 5.5.2000 is vacated. No costs.

(R.M.LODHA,J)

(R.S.MOHITE,J)